

## METROPOLITAN AREA PLANNING COMMISSION

### MINUTES

August 5, 2004

The regular meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission was held on Thursday, August 5, 2004, at 1:30 P.M., in the Planning Department Conference Room, 10<sup>th</sup> floor, City Hall, 455 North Main, Wichita Kansas. The following members were present: Ronald Marnell, Chair; Morris K. Dunlap, Vice-Chair; James Barfield (In @ 1:32); Darrell Downing; John W. McKay Jr.; Bill Johnson; Bud Hentzen; Elizabeth Bishop; M.S. Mitchell; Denise Sherman; and Frank Garofalo. Harold Warner Jr.; Gary K. Gibbs and Bob Hernandez were not present. Staff members present were: John L. Schlegel, Secretary; Dale Miller, Current Plans Supervisor; Donna Goltry, Principal Planner; Neil Strahl, Senior Planner; Bill Longnecker, Senior Planner; Scott Knebel, Senior Planner; Jess McNeely, Associate Planner and Rose Simmering, Recording Secretary.

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#### ❖ PLANNING COMMISSION ITEMS

##### 1. Approval of July 8, 2004, and July 22, 2004 meeting minutes.

GAROFALO I have one correction on page 25, where it says, "Garofalo closes the public hearing and returns to the bench" I think that should be Commissioner Dunlap.

**MOTION:** To approve July 22, 2004 with correction. July 8<sup>th</sup> meeting minutes not in packet for review and were not approved.

MITCHELL moved, GAROFALO seconded the motion, and it carried (10-0).

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#### ❖ SUBDIVISION ITEMS

##### 2. Consideration of Subdivision Committee recommendations

##### 2-1. SUB2004-73 – Final Plat – MIDIAN SHRINE ADDITION, located east of Ridge Road and on the south side of 13<sup>th</sup> Street North.

**NOTE:** This is an unplatted site located within the City. A conditional use (CON 2003-48) has been approved for the site for Community Assembly. The site is located within the 100-year floodplain.

#### **STAFF COMMENTS:**

- A. The applicant shall guarantee the extension of sanitary sewer to serve the lots being platted.
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- C. Traffic Engineering has requested a petition for future left turn lanes to 13<sup>th</sup> St. North.
- D. The plat proposes one opening along 13th St. North. The access opening is approved.
- E. City Engineering needs to comment on the status of the applicant's drainage plan. The drainage plan is approved.
- F. Provisions shall be made for ownership and maintenance of the proposed reserves. A covenant shall be submitted regarding ownership and maintenance responsibilities.
- G. For those reserves being platted for drainage purposes, the required covenant which provides for ownership and maintenance of the reserves shall grant, to the City, the authority to maintain the drainage reserves in the event the owner(s) fail to do so. The covenant shall provide for the cost of such maintenance to be charged back to the owner(s) by the governing body.
- H. City Fire Department has requested an emergency access opening extending to Hazelwood in the adjoining property to the west. A 20-ft wide hard paved surface is needed. Standard gating and signing are required per City Fire Department standards. The plat has denoted the emergency access opening as requested.
- I. This property is within a zone identified by the City Engineers' office as likely to have groundwater at some or all times within 10 feet of the ground surface elevation. Building with specially engineered foundations or with the lowest floor opening above groundwater is recommended, and owners seeking building permits on this property will be similarly advised. More detailed information on recorded groundwater elevations in the vicinity of this property is available in the City Engineers' office.
- J. Approval of this plat will require a waiver of the lot depth to width ratio of the Subdivision Regulations. The Subdivision Regulations state that the maximum depth of all non-residential lots shall not exceed three times the width. A modification has been approved.

- K. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- L. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- M. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- N. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- O. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- P. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- Q. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- R. Perimeter closure computations shall be submitted with the final plat tracing.
- S. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- T. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property. **Southwestern Bell has requested additional easements.**
- U. The applicant is reminded that a compact disc (CD) shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD, or sent via e-mail to MAPD ([cholloway@wichita.gov](mailto:cholloway@wichita.gov)). This will be used by the City and County GIS Department.

NEIL STRAHL Planning staff. This site was approved for a Conditional Use for Community Assembly. The Plat was recommended to be approved last week by the Subdivision Committee, and the major issues that were discussed were traffic improvements for a future left turn lane to 13<sup>th</sup> Street North, one access opening along 13<sup>th</sup> Street, and an emergency access opening to the property to the west. The Conditional Use that was approved had included a condition for public access easement along the west side that would connect two park reserves. When that Conditional Use went to the City Council they had voted to delete that condition. The Subdivision Committee was considering the public access easement along the east side of the property when the preliminary plat was reviewed and there was a 2-2 vote on that. However, when the final plat was reviewed last week that issue was not brought back to the table so that condition was eliminated.

HENTZEN What are we being asked to do today?

STRAHL Approve the plat as presented.

MITCHELL Going back to the time when the Planning Commission approved the Conditional Use case, what we were trying to do was to connect two parcels of park, one of which has been landlocked and isolated since some time in the 1960's. The Council Member for that District had heard opposition from the adjacent residents of those lots in that short half mile that would be immediately adjacent to that 30 foot access, and he voted, and convinced the City Council to vote, to not require that item. Unfortunately, the Park Director who was there that day did not advise either him or the Council that the Park Board had taken action, on two occasions, to recommend that condition.

Now going back, and I think many of us would be willing to do the substitute easement under the KG & E or Western Resources 150 foot power line easement. There is a letter I have supplied at your stations today from Western Resources which indicates a probable approval if certain conditions could be met. So it is my hope today that we would listen to two members of the Board of Park Commissioners who are here, to bring you up to date on their position, and possibly take a different approach than the recommendation by staff, to go to the City Council, and hope that we can persuade the City Council to take a different action.

BISHOP Neil, you said that there was a 2-2 vote at the Preliminary Plat level, so what happened between the Preliminary Plat level and the Final Plat approval?

STRAHL The 2-2 vote was just on that condition for the trail, when it came back last week staff discussed the KG & E issue with Subdivision Committee along with the opposition to the east, and staff dropped our recommendation for the public access easement. The Subdivision Committee at that time chose not to put it back on the table and did not include it.

BARFIELD So staff is comfortable with dropping that condition?

STRAHL Yes, we are.

BARFIELD I don't understand. It was your recommendation. It appears to me that staff is constantly in these particular proposals putting these pathways in, and I think we are looking at them as a public amenity here, and yet now we come back and the staff is now comfortable eliminating this.

SCHLEGEL The staff recommendation had been originally to include that easement north and south through this property in order to make a pathways connection that is shown in the Parks and Pathways Plan. However, I have had several conversations with the Council Member for this District who has stated very strongly the opposition to doing that and that is based on the opposition of the Homeowners Association for the subdivisions both to the west and to the east. With what is probably going to happen when this gets to City Council, we didn't feel it was a recommendation that we wanted to continue to push. It was my recommendation to Neil to back off of that recommendation.

BARFIELD I am a little upset. We continue to see these bike and pathways being treated as stepchildren, and I think in the future we need to make the distinction. Either we are going to apply these and enforce them, or we are not going to. If we are not, then just take them off the table.

DENNIS BRUNNER, DISTRICT V PARK BOARD, 8710 W. 19<sup>th</sup> St. N., Wichita, KS 67212 On March 8<sup>th</sup> the Shriners brought this proposal to us which included a 30 foot easement so that we could have access to both of the park parcels located along the west side of the area. In their proposal they wanted to help us to take care of the parks and adopt a park type situation, but they also wanted to give us a 30 foot easement so that we could have access to both areas. The south parcel is landlocked if we don't have some easement there to get to it. We at that time listened to a pretty lengthy debate from people from Country Acres and also Spinnaker's Cove.

So on March 8<sup>th</sup> the Park Board voted unanimously to go ahead and accept the Shriner's proposal for the 30 foot easement. From that point on I am not sure that a lot of information got back to you all about our vote. There are some lengthy plans of going into bike paths and also the walking paths and this easement would not only attach those two parcels to a possible walking path that could take us to Sedgwick County Park which would tie into other walking paths. We feel strongly that we do need to have some type of easement or some way of accessing this other than going under the power lines for the bike paths which would not help us to have access to our parcels which are on the extreme opposite side of this parcel.

BOB ALDRICH, 1013 COMPTON, WICHITA KS 67212 I am also a member of the Wichita Park Board. We as a Park Board did vote unanimously on this proposal. I don't know if you received our minutes or have communication that our Board made. Over on the west side where the property owners are there have been a lot of encroachments over the years from some of the residents that are coming out there on park land. This is something that we need to put a stop to. There have been a lot of controversy in the past regarding park property and we are trying to do what is best for the community and for the development of our properties. It is essential that we do have this connection bike path to adjoin the two parcels of land that we are talking about. One thing that I would hope that MAPC would do is listen to our recommendation that we do have.

HENTZEN What is the Park Board recommending?

ALDRICH We are recommending that we approve the Shriners proposal. They want to adopt that south section of that park land and that will help take some of the expenses off of the City as far as the mowing and the upkeep and everything else. We have two good parcels of land that is park property and it should be utilized as parkland. But we also need a connection so that we can get more flow of people to utilize that property.

GAROFALO I think the previous speaker said that your Board heard from the neighbors and the neighbors were opposed?

ALDRICH Not all of them were opposed. There was one lady that was opposed to it due to the fact that the Shriners have a tendency of having alcohol on the premises.

BRUNNER They were opposed to the Shriner's buying the property but they were not opposed to the bike path.

ALDRICH There were probably 7 different speakers. One gentleman expressed concerns about a proposed pedestrian path, due to the proximity of the 13<sup>th</sup> Street bridge, is a safety issue. There was another gentlemen that wanted the Park Department to give up or vacate the park parcels, and that is something that we are not looking at doing. We don't want to vacate park land. We are trying to enhance park land and get more of it. There was another gentlemen that said that he saw no value to connecting the two park areas and having people go from Ridge Road and 13<sup>th</sup> Street, which is a very busy intersection, and said the path would be too close to the 13<sup>th</sup> Street bridge also. Most of the concerns were the connections as far as a cross over and safety as far as pedestrian goes.

TERRY SMYTHE, BAUGHMAN COMPANY There is a lot of misinformation. The offer that the Shrine made to the Park Board was based upon their impression that everybody on both sides of the lake wanted the bike path. When the Shrine found out that nobody on either side of this area wanted a bike path, they withdrew their offer. This was an offer to be a good neighbor. These two little strips of ground, I am not going to call them parks because if you have been out there you understand what these look like or what they don't look like. These are pieces of property are hardly ever maintained, maybe once a year. The south piece is not land locked. It has access over to Ridge Road via the ditch. So don't get the impression that it is out in the middle of nowhere and this piece of property is the key to develop this prime piece of park property, because it is not.

I am not going to defend the homeowners, but the homeowners for years when we were discussing this Conditional Use and prior to that when we were trying to do single-family homes on this property had stated time and time again that the Park Board had never done anything down here and that the reason why they continued to creep out into park property is because they have to maintain it

and they have to provide facilities for their kids to play. They move their swing sets on the backside, and they mow it on the backside, and I think they even have a little ball diamond that they have constructed themselves based upon what they have told me. So to get the impression that this is a prime piece of park property, both of them, is extremely misleading.

The two pieces that are connected, at one point and time the Shrine offered the Park Department to have access if they ever need to get back on the south piece to mow and that they would work with them to get their mowers from point A to point B for maintenance access. The Director of Parks at one point in time talked about how this south piece was mowed 3-4 times a year. I am going to disagree with him, and I could get several owners telling you the same thing. They have to maintain their piece back there, and they want to maintain it. In a previous attempt to try and do single-family on here, we worked to try and incorporate those leftover pieces of property. I am going to say leftover pieces because they are not useable pieces of park property, because if they were, I think the Park Board years ago, because this property was vacant years ago, would have made the case to try and get an access from point A to point B if there was such great demand. That never happened from what I have been told. Now that we are getting ready to plat the property you are going to try and get the new owner of the property and kind of hold him hostage to say now we want you to do it now. The Shrine made a very valid attempt to agree with that until they found out that they were going to be bad neighbors if they agreed to this thing. So based upon what the neighbors wanted out there, or don't want, they withdrew their offer.

So when we went with the Conditional Use to the City Council, the City Council said no bike path. If they wanted to move the bike path to some other location on this property, they could have asked. They could have gotten me, or the Shriners at the podium but they didn't. The City Council said they did not want the bike path requirement on there, and it was unanimously approved at City Council without the bike path requirement. I don't think the Shriners have the offer on the table any more because they were misled to believe that everybody out here wanted a bike path and what was discussed at some point in time was just an access to allow the Park Department to get back here to just mow this property more than the one time a year that they do it. The homeowners are the ones that have been maintaining that strip back there.

I am going to have to fall back on the issue of that we went to the City Council with the requirement that the homeowners didn't want it, and the City Council said no, we are not going to require it. This is not landlocked. It's got access today. I think the Director of Park Department said that the numerous times that they mow this property they trespass or drive down the ditch. At not one point during this process when we talked about the bike path has there been any discussion about hold harmless agreements with the Shrine, the current owner, or even KG & E, and now the discussion is let's put it under the KG & E right-of-way. Well they have certain conditions of approval. They are not necessarily against that kind of an issue but there has to be hold harmless agreements. There has to be plans put together, and at no point in time have I heard the City saying that any of these people will be held harmless if this thing is put in.

The homeowners don't want it on either side. The Shrine withdrew their request to be good neighbors because they were found out not to be a good neighbor because they were to agree to this. City Council unanimously said "No". They don't want the bike path there.

BISHOP When you say that in your opinion that the Shriners are no longer offering the easement for the bike path, at what point did they withdraw it? After it was accepted by the MAPC?

SMYTHE They withdrew, when the Homeowners to the west voiced opposition to it being there and if that requirement was left in they would still protest the Shrine being there. The homeowners said they don't want the bike path and if the bike path is removed, they are happy with the Shrine being there, so they had an issue with the bike path requirement. So at that point in time, and that is why it went to City Council that way, at that point in time that is when it was no longer on the table.

The Shrine gave their commitment to the homeowners to the west that they would not agree to the bike path because nobody out there wants it, and the vote at City Council is a testament to that. It was unanimously approved without the bike path requirement.

I think this has been poorly handled. I stated a long time ago that if this was done after the property closed when you had specific plans and a few other things put together, hold harmless agreements by the City, that if somebody bicycles down the path and hits the lake and drowns that this owner and Spinnaker Cove's next door aren't liable for the drowning on a public path. Not once has anybody heard a hold harmless agreement that would allow that to happen. KG & E kind of said the same thing. We want a hold harmless agreement if somebody hits our poles and gets killed or injured they aren't responsible for it, and those things never came up and have never been offered by the City.

MITCHELL Did the Shrine withdraw its offer prior to the vote of the Planning Commission?

SMYTHE Yes. That is why the homeowners to the west did not protest it.

MITCHELL The vote of the Planning Commission was unanimous to include that item in the approval of the Conditional Use.

BISHOP They did not withdraw it until after we had voted, as far as I was concerned.

SMYTHE The withdraw of the protest petitions from the homeowners to the west was predicated on the Shrine not agreeing to have the bike path. And that is why we didn't have a 20% protest petition at the Conditional Use.

MITCHELL But the Shrine did tell us prior to our vote that they were withdrawing their offer for the 30 foot access. We voted after we knew that?

SMYTHE I agree with that.

BARFIELD I recall this being sent back to us by the City Council, not because they didn't want the bike path at all. It is just they didn't want it on the west side.

MILLER It was deferred by Commissioner McKay initially to give the two parties time to discuss and see if they could come to an agreement. When it came back a second time, they were still in disagreement, but it wasn't sent to Council and then sent back to the Planning Commission for further consideration.

BARFIELD It has been to the City Council one time?

SMYTHE That is all that is required.

MILLER I would say that Mr. Mitchell's memory of what happened is correct, that they did withdraw the offer for the bike path prior to the Planning Commission vote. The Planning Commission approved a motion that included the bike path based on Mr. Mitchell including that in the motion and that is what was sent to Council.

MARNELL That was on the west side of the property?

MILLER Correct.

HENTZEN Do I understand that it is what we did unanimously, yet that vote had the two things in it, getting from one piece of the park to the other. That is what we said, now the City Council rejected that and sent it back to us?

MARNELL No. It was a Conditional Use that went to the City Council, and they approved it unanimously after removing the condition for the bike path and what is here today is the plat.

HENTZEN I am sorry they didn't reject it.

SCHLEGEL They approved the Conditional Use, but they removed the condition requiring the easement along the west property line.

HENTZEN The final plat is here today with the same recommendations that we gave to the City Council?

SCHLEGEL The recommendation from Subdivision Committee is not to require the pathway easement across the property.

MCKAY We approved it based on what we wanted, including the path to the west edge for the park. It went to the City Council, and the City Council passed it without it. They didn't send it back to us for reconsideration. They just said no we are going to approve the Conditional Use, but they don't have to put the 30 foot bicycle path in the back. So now we are at the platting stage, and staff put that back in and then you withdrew it, or when it came back for platting you didn't put it in at all? Neil said that even after City Council said we don't want it there, that the staff went ahead and put it back in?

SCHLEGEL When this item came back to the Subdivision Committee our recommendation was for an easement through the property to connect the two pieces of the Park Board property but not along the west property line. Because the action by the City Council was to remove the easement along the west property line and because of the opposition of the neighborhood to the west.

MCKAY So now you want to move it over down the other easement?

SCHLEGEL Right, down the easement we thought would be acceptable.

MCKAY Where the KG & E line is?

SCHLEGEL Right, and that was our original recommendation to the Subdivision Committee.

MCKAY And now you have even dropped that?

SCHLEGEL We dropped that because the neighborhood to the east has let the Council Member know that they don't want to see any pathway through this property. The Council Member has talked to me on several occasions and convinced me that it was not a good idea.

JOHNSON KG & E didn't want it either. That is what they said last week.

SCHLEGEL We are not sure about that.

MITCHELL That is not what the letter says.

BISHOP They raised some concerns, but they are not saying that it is not workable.

MCKAY So regardless what we do here today, put it in or leave it out, and send it to City Council and they act the same way they did before?

SCHLEGEL I would say that is a good bet.

BRUNNER At the meeting which the people from Country Acres and Spinnaker Coves spoke, there was never any mention that they were opposed to any bike path, because a bike path never came up at this meeting. The only thing that came up was that they were opposed to the Shriners buying or building the property. They were also concerned that we were going to give the two parcels to the Shriners as part of their deal, and part of our concern here was to inform them that we had no intentions of giving away any park land. I will say that the park land has not been improved, but we have a lot of park land sitting in Wichita that has not

been improved but is also in the planning stages in some cases. In maybe some very distant planning stages, this park land could be used, so it is not just worthless land sitting there. It is land that has been designated for parks and down the road it could be used for parks and hopefully it will be. Their main concern seemed to be of the safety of people up at 13<sup>th</sup> Street. We are aware this is not developed parkland.

GAROFALO Apparently the City Council Member from the 5<sup>th</sup> District is opposed to the bike path. Has he communicated with you?

BRUNNER There has been no communication from the District V Council Member.

GAROFALO Are you his appointee, to the Park Board?

BRUNNER Yes, I am, but I haven't talked to him specifically about this matter.

BARFIELD You said there was no discussion of the bike path?

BRUNNER The bike path did not come up at this particular meeting, when we voted unanimously to accept the proposal from the Shrine.

MITCHELL I think what he means is, at that meeting at which the Shrine and both neighborhoods were represented, was the path or access between those two parks part of what was discussed?

BRUNNER The bike path never came up as an issue. A maintenance path, and a 30 foot easement was the only thing that was discussed at that meeting.

MITCHELL We are talking about the same 30 foot easement?

BRUNNER Yes.

ALDRICH My concern is the connection of the two paths. The City does have plans to connect Zoo Blvd. to Central going along the waterways there also. This will be just another way that we can again connect these two parcels together. We are having encroachments from the residents on the west side. They have built sheds and everything else out there.

SMYTHE Even today, right now, there is confusion, mainly because some people are talking about a 30 foot maintenance agreement. Some people are talking about a 30 foot bike path. KG & E will tell you that they don't grant 30 foot bike paths. If they ever thought about granting a bike path it is a specific width, a specific location and planned out. We have an issue of the Park Board may want to go down there and mow occasionally, and I am telling you that the Shrine have worked something out so if they ever need to take their mower down their driveway they can mow that south piece. So the 30 foot maintenance easement issue has been taken care of. Now the issue is the bike path, and that is why you have lost the people on the west side because they do not like the idea of people bicycling in their backyard.

The Shrine was told that the neighbors wanted the bike path, and when they found out the neighbors didn't want it, the Shrine withdrew their agreement to be a good neighbor. They withdrew their agreement, the homeowners to the west withdrew their protest petitions based upon that, and I don't know the ramifications now if all the sudden this is put back in. The Shrine is going to get a bad reputation because somebody is going to blame them for reneging on their promise not to have that agreement in there.

BARFIELD You say that the neighbors on the east side made it clear they didn't want it. The Park Board member says the issue of a bike path was never addressed at the meeting.

SMYTHE I believe his meeting was in March. I am talking about when this got approved at City Council and by the Planning Commission, a couple of months ago when that bike path offer was withdrawn because the neighbors to the east and west, particularly to the west, did not want it, and would protest it based upon the bike path being right along their backyards and right along their fences, some of which are on Park Board property. But his meeting and his discussion occurred before the latest round and the final approval of the Conditional Use both at the City Council and Planning Commission.

BARFIELD I also hear you saying that you had neighbors that were complaining about the fact that people were already riding their bicycles in their backyards, is that correct?

SMYTHE No. What I stated is that the neighbors to the west did not like the idea of a bike path right next to their backyard, and that is what they have been told is that if the 30 foot bike path/maintenance easement occurred along their fences they would protest it. When the Shrine said they would no longer allow that to happen and withdrew their offer, that is when the people to the west became happy.

GAROFALO Were you at the Council meeting?

SMYTHE Yes, I was.

GAROFALO Did the City Council oppose a bike path, but not oppose an easement?

SCHLEGEL The opposition was opposition to requiring the easement along that west property line.

SMYTHE For the bike path.

SCHLEGEL Right.

MITCHELL The recommendation that I made to the Planning Commission at which the Planning Commission voted on, was for a public access easement of 30 feet. It was not a maintenance access, and it wasn't a bike path. It could include both. A public access easement along the west 30 feet adjacent to the portion in between the two parcels of park, that was the motion I made and was approved by MAPC.

MARNELL I have a question about who can address this map and who handed this information out today.

MITCHELL That was my handout.

MARNELL There are a couple of segments on here that are circled in red. The west one comes from the center of the park and joins another path, is that this proposed easement?

MITCHELL No, that is a connection that would be from the floodway right-of-way to 13<sup>th</sup> Street, but it is approximately in the same location as a line connecting the two parks.

MARNELL Doesn't this floodway go up and touch 13<sup>th</sup> Street further north?

MITCHELL Yes, but there is no path right on that floodway. We have none right where that dotted line is.

MARNELL It may be obtained in the future?

MITCHELL Yes.

MARNELL So access to Sedgwick County Park could also be gained to that proposed bike path along 13<sup>th</sup> on public right-of-way.

MITCHELL Correct, but would have to cross 13<sup>th</sup> Street to get to the park, from this line it would go under the bridge and not have a surface crossing.

BISHOP I would like to express a concern about how we achieve communication with the Park Department. I recall some discussion of the Park Board meeting, and I know that there was approval that was alluded to when we had our discussion on it, but we have never got anything in writing. We have never been provided with minutes, or any direction from the Park Board, or the Director of the Park Department until today. It appears to me that they have not been communicated with about how this issue was developing. I am concerned that what we seem to be doing with our parks, open spaces, and facilities is killing them with neglect. Then it is easy for neighbors to encroach because we don't put the amount of resources in to take care of parkland.

GAROFALO I would like to have seen the City Council minutes on the Conditional Use discussing this project.

**MOTION:** Approve the plat as recommended by the Subdivision Committee.

**MCKAY** moved, **HENTZEN** seconded the motion.

MCKAY Because when I was sitting here and this was discussed originally, the people to the west were not opposed to the Shrine owning the property. It was strictly this easement and giving public access to their backyards. Also if we send it from here to City Council with anything other than what Subdivision recommended, the City Council will do the same thing again.

**SUBSTITUTE MOTION:** Defer this item for two weeks.

**BISHOP** moved, **SHERMAN** seconded the motion.

BISHOP I know there are other interested parties in the community that would like to address this and support parkland.

MCKAY Then why aren't they here?

BISHOP Because they didn't know that this was going on.

**SUBSTITUTE MOTION FAILS:** Vote 4-7

**BISHOP, SHERMAN, BARFIELD MITCHELL in favor.**

**MOTION CARRIES:** Vote 7-4

**BISHOP, SHERMAN, BARFIELD, MITCHELL, opposed.**

BARFIELD I am not in favor of the Planning Department withdrawing items or provisions based on the comments of a particular City Council Member. We have been appointed to make recommendations to the Governing Body, and I think what we should do is make our recommendations and send it forward, and then it is up to them.

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**2-2      SUB2004-89 – Final Portion of Overall Preliminary Plat – EVERGREEN FIFTH ADDITION, located on the south side of 29<sup>th</sup> Street North and west of Maize Road.**

**NOTE:** This is an unplatted site located in the City of Wichita. This final plat consists of the north portion of the overall preliminary plat approved for the site and represents the second phase of development.

**STAFF COMMENTS:**

- A. The applicant shall guarantee the extension of sanitary sewer and City water to serve the lots being platted.
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- C. **City Engineering** needs to comment on the drainage plan. **An off-site drainage easement may be needed.**
- D. **Traffic Engineering** has approved the 58-ft width of Parkdale if restricted to No Parking on both sides of the street. A restrictive covenant shall be provided specifying this requirement.
- E. Provisions shall be made for ownership and maintenance of the proposed reserves for the subsequent phase of development. The applicant shall either form a lot owners' association prior to recording the plat or shall submit a covenant stating when the association will be formed, when the reserves will be deeded to the association and who is to own and maintain the reserves prior to the association taking over those responsibilities.
- F. The applicant shall submit a covenant which provides for four (4) off-street parking spaces per dwelling unit on each lot which abuts a 58-foot street. The covenant shall inventory the affected lots by lot and block number and shall state that the covenant runs with the land and is binding on future owners and assigns.
- G. Complete access control needs to be dedicated along the 29<sup>th</sup> St. frontage.
- H. **Traffic Engineering** has requested a petition for a left-turn lane along 29<sup>th</sup> St. North.
- I. The applicant shall guarantee the paving of the proposed streets. The guarantee shall also provide for sidewalks on at least one side of Parkdale.
- J. **GIS** needs to comment on the plat's street names. **The street names are approved.**
- K. The legal description needs to be corrected.
- L. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- M. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- N. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- O. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- P. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- Q. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- R. Perimeter closure computations shall be submitted with the final plat tracing.
- S. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- T. The representatives from the **utility companies** should be prepared to comment on the need for any additional utility easements to be platted on this property. **Westar Energy and Southwestern Bell have requested additional easements.**

- U. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD. This will be used by the City and County GIS Department.

**MOTION:** To approve, subject to staff comments and citing the findings in their report.

**MARNELL** moved, **DUNLAP** seconded the motion, and it carried (11-0).

2-3 **SUB2004-92 – One-Step Final Plat – BLATTNER ADDITION, located east of 135<sup>th</sup> Street West and on the north side of 13<sup>th</sup> Street North.**

**NOTE:** The west portion of this property is located in the County and annexation is required. The site has been approved for two zone changes (ZON 2003-18 and ZON 2003-16) to SF-5, Single-Family Residential and LC, Limited Commercial. Two Community Unit Plans (CUP 2003-15 and CUP 2003-16) were also approved for this site.

**STAFF COMMENTS:**

- A. Prior to this plat being forwarded to the City Council, the applicant shall apply for annexation to Wichita for the west portion of the plat.
- B. The applicant shall guarantee the extension of sanitary sewer to serve the lots being platted. Fees in lieu of assessment regarding water connections are required.
- C. In accordance with the CUP, the following transportation requirements are required:
- a. Raised center medians are required on all main driveways to prevent left-turns in and out of adjacent parcels for a distance of at least 150 feet back from the right-of-way line.
  - b. Continuous right-turn deceleration lanes should be provided along 13<sup>th</sup> Street North at both entrances.
  - c. A guarantee shall be provided for the proportional cost of configuring and installing a traffic signal, if warranted in the future, at one entrance on 13<sup>th</sup> Street North.
  - d. Left-turn lanes should be provided with adequate storage for queued vehicles on 13<sup>th</sup> Street North.
  - e. Provision of a traffic impact study is not required if the applicant accepts the above recommendations.
- D. In accordance with the CUP approval, a guarantee shall be provided for paving on 13<sup>th</sup> Street North to county standards.
- E. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- F. **City Engineering** needs to comment on the status of the applicant's drainage plan. **Sedgwick County requests a drainage plan for review. A large amount of off-site drainage enters and exits the plat that is not addressed by the easements on the plat. Additional drainage easements may be needed adjacent to the 13th St. right-of-way line to convey drainage from areas to the west.**
- G. **City Water and Sewer Department** has requested a utility layout. **The 10-ft utility easement along the west property line of Lot 1 needs to be increased to 20 feet. A non-masonry wall with a removable gate is required for the portion of the wall easement that crosses the utility easements.**
- H. Traffic Engineering has approved two openings, both with full turning movements. A Restrictive Covenant shall be provided allowing future cross-lot access with the property to the east. The westerly opening shall be aligned with Forestview Street.
- I. In accordance with the KS Wetland Mapping Conventions under the Memorandum of Understanding between the USDA-NRCS; USEPA; USACE; and USF&WS, this site has been identified as one with potential wetland hydrology. The US Army Corps of Engineers (USACE) should be contacted (316-322-8247) to have a wetland determination completed."
- J. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- K. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- L. The applicant shall install or guarantee the installation of all utilities and facilities that are applicable and described in Article 8 of the MA PC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- M. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.

- N. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone: 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- O. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- P. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- Q. Perimeter closure computations shall be submitted with the final plat tracing.
- R. Recording of the plat within 30 days after approval by the City Council and/or County Commission.
- S. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property. **Southwestern Bell has requested additional easements.**
- T. The applicant is reminded that a compact disc (CD) shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD, or sent via e-mail to MAPD ([cholloway@wichita.gov](mailto:cholloway@wichita.gov)). This will be used by the City and County GIS Department.

NEIL STRAHL Planning Staff. At last week's Subdivision meeting the Committee requested that the applicant meet with Traffic Engineering to address and resolve issues with access, and that meeting has occurred. Two openings have been permitted by Traffic Engineering. For the easterly opening, a restrictive covenant will need to be provided, allowing cross lot access with the property to the east. For the westerly opening, that will need to be in line with Forestview Street.

MITCHELL One of the conditions was to guarantee the proportional cost of configuring and installing the traffic signal. That was discussed, but I don't know that there was any number that was arrived at either as a percentage or a dollar figure that anyone could really give an evaluation of what that recommendation will impose on the applicant.

STRAHL The specific percentage was not included in the condition.

MCKAY Don Folger who is that agent, is my nephew, do I need to step down?

LANG You do not have a legal conflict.

MCKAY I will step down.

MITCHELL The percentage or the dollar figure that would be the responsibility of this applicant wasn't fixed in the discussion at the Subdivision Committee meeting. Can you give us that information?

PAUL GUNZELMAN, ASSOCIATE TRAFFIC ENGINEER I can give you the cost of a traffic signal installation which is \$120,000. I do not have the specific percentage for this case. Typically it is the developers that fund the cost of signalization for their private drives. The difference with this one is that it lines up with a City street. We have a few of those cases in the recent past, regarding the Target stores, and they have funded 100% of the cost of the signalization. I believe it will be our position to ask for the 100% petition for the traffic signalization at this time when it comes to warrants being met. We could at that time discuss with the applicant or owner if the full 100% is needed or if the City will fund a portion of that cost.

MITCHELL Your request will be for the total amount?

GUNZELMAN Yes.

BISHOP When you mentioned when it comes to the warrants are being met, this is not at an arterial intersection, it is mid-block. There would have to be some considerable traffic along there before any warrants would be met. If the applicant wanted the light to enhance his development prior to the warrants being met then perhaps the developer would like to go ahead and pay for it because he derives a greater benefit than the public as a whole.

GUNZELMAN That is true, but they would still have to meet warrants before we install the signal.

BISHOP Won't that take a lot of time?

GUNZELMAN Yes, and we would hold that petition until the signal is warranted.

HENTZEN I want to make a comment about that last request about maybe the guy ought to pay for it because it would help his business. I think that is a very serious thing if you step into that because you decide where the openings are going to be and where the lights are needed and when they are needed. If all we say is well, you pay the whole cost and we will let you put it in, I don't think you want to do that.

BISHOP He said that is not the policy.

HENTZEN I am saying that it is dangerous, because if someone comes in and says they will pay for it, it puts them in a heck of a spot.

SMYTHE According to Mr. Folger he is in agreement with staff comments. Last week at the one step final at Subdivision, he stated that he would like a guarantee to pay his share of it. We could debate what his share is, some of this to the north is actually residential. There is 8 acres of commercial off the south end. What share is appropriate? I don't know. I think a share of a petition is a more appropriate language.

MITCHELL You realize from what the Traffic Engineer said your share is 100%?

SMYTHE That is why at the Subdivision meeting last week, I stated that we would like to pay our share of, but what the staff is stating is that they would like a 100% guarantee. This is an expensive disagreement on proportion.

MITCHELL Are you saying you don't agree with that condition?

SMYTHE Last week at Subdivision I stated that we would pay our share of a traffic signal. There was no clarification to whether that was 90%, 99%, or 50%.

MITCHELL You now know that it is 100%.

SMYTHE That is correct, and I still want to state that we want to pay our share of that traffic signal.

MARNELL On the staff report it says that the current zoning is "SF-5", and "SF-20" and then it says proposed zoning "SF-5, on Lot 1, and "LC", on Lot 2. Is this item coming back to us for zoning?

SMYTHE This has already been zoned and a C.U. P. and approved about a year ago, so we are platting the property.

BISHOP I need a clarification from staff because what I heard Mr. Gunzelman say is that since the applicant has agreed to move the westerly opening to align with Forestview that there would be some consideration of sharing the cost of that signalization because it is aligning with a City street, so I don't think the 100% is required.

GUNZELMAN I did say that and I think we would like to see that 100% now; however, when it comes time to build that signal, then we might negotiate with the owner at that time to see if the City would fund part of that signal.

BISHOP Are you saying that where it says proportional share for purposes for this plat for this vote today you are saying 100%, that you are regarding 100% as proportional?

GUNZELMAN Yes.

SHERMAN You are saying you are asking for 100%, and Mr. Smythe is agreeing 100%?

SMYTHE Staff is asking for 100% guarantee and we are stating that the word "share" should be in there because when we line up with the street across the street, they are going to generate some traffic. What that share is I couldn't tell you today.

SHERMAN But your client is agreeing with that? Down the road there is going to be a percentage determined, but if you agree today at 100% and they decide not to make that percentage change, then that is what he is agreeing to right?

SMYTHE That is the problem we always have with this kind of verbiage about shares and 100% guarantees. I am going to rely on the wisdom of the Planning Commission. If you think that is the appropriate way to go, make your motion.

MARNELL Is this issue for the traffic signal already covered in the C.U.P. for this property?

SMYTHE Based open the one-step final comments, it just says the guarantee shall be provided for the cost of configuring and installing a traffic signal if warranted in the future at one entrance on 13<sup>th</sup> Street.

BISHOP Item E says, Provision of a traffic impact study is not required if the applicant accepts the above recommendation, so this makes you into a pretzel. So what they are asking is do you want to roll the dice and go ahead and pay for a traffic study, and then see what your proportional share would be or do you want to go ahead and take a chance?

SHERMAN The wording is bothering me.

SMYTHE I will be happy to defer two weeks and get with Scott Logan and clean up the wording.

**MOTION:** To put wording in stating that there will be discussion of what that share or portion will be down the road or in the future.

**SHERMAN** moved, **Died for lack of second.**

JOHNSON Last week at Subdivision Scott Logan was here, and I think his comment was that he didn't know if there was ever going to be a signal here because he didn't see it was going to generate enough traffic. The comments in the notes was that they were supposed to pay their appropriate share, which I think Terry agreed to that last week and Subdivision approved it.

SHERMAN Okay, but the question came up did you understand that it could be 100%.

JOHNSON That is not what Scott Logan told us at Subdivision.

MARNELL It says proportional in the staff report.

SHERMAN No, today it came up. Isn't that what you asked Mr. Mitchell?

MITCHELL Yes, my question was what portion?

JOHNSON There is no way to tell that today because you don't know what is impacting what, it could be 92% or 42%.

SHERMAN I understand and then he said you do understand that it could be 100%?

JOHNSON I suppose it could, but they would have to prove it to him.

MITCHELL How do you write a petition without a number?

MILLER We don't do the petitions. I don't know.

SHERMAN My question only came up in my mind after he asked, you still understand that it could be 100%.

MITCHELL Of \$120,000.

SHERMAN That is correct, at anytime down the road when it is warranted.

MITCHELL As long as that is what comes out of this meeting I am satisfied. We have a number and we have the opportunity for him to negotiate down from that number.

**MOTION:** To approve subject to the recommendation in the staff report and Subdivision Recommendation.

**JOHNSON** moved, **MITCHELL** seconded the motion.

BARFIELD Clarification of the motion.

HENTZEN The only thing to add to that item is the estimate of \$120,000 and identify the number and leave the wording just like it is -- proportional share?

MARNELL I don't want the Commissioner Johnson to put \$120,000 in his motion, because when this gets put in they may not be \$120,000. It would still be a proportional amount.

HENTZEN I am willing to second his motion to approve what the Subdivision Committee voted on.

MITCHELL withdraws second, if the \$120,000 is not in the motion and the 100% as far as coming out of MAPC is not in the motion then I don't want to second.

**MOTION:** To approve subject to the recommendation in the staff report as written.

**JOHNSON** moved, **MARNELL** seconded the motion, and it carried (9-1-1) (**MITCHELL** opposed, **MCKAY** abstains)

2-4 **SUB2004-91 – One-Step Final Plat – SUNSET ESTATES ADDITION, located on the south side of 15<sup>th</sup> Street South and on the east side of 311<sup>th</sup> Street West.**

**NOTE:** This unplatted site is located in the County in an area designated as "rural" by the 1999 Update to the Wichita-Sedgwick County Comprehensive Plan. It is located in the Garden Plain Area of Influence.

**STAFF COMMENTS:**

- A. Since neither sanitary sewer nor municipal water is available to serve this property, the applicant shall contact **County Code Enforcement** to find out what tests may be necessary and what standards are to be met for approval of on-site sewerage and water wells. A memorandum shall be obtained specifying approval.
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- C. **County Engineering** needs to comment on the status of the applicant's drainage plan. **The drainage plan is approved. The drainage easement shown on Lot 5, Block 1 should be shown as a floodway reserve with applicable language in platlor's text. A drainage easement is needed between Lots 3 & 6, Lots 4 & 5, Block 2.**
- D. The lot lines need to be solid lines.

- E. The temporary cul-de-sac between Lots 1 & 2, Block 3 and Lots 5 & 6, Block 2 should be moved to the north line of the plat.
- F. A temporary turnaround should be provided at the plat's east line.
- G. Per **Sedgwick County Fire Department**, access drives to any structures in access of 150 feet from the edge of the roadway will need to be installed prior to final framing inspection, preferably before the start of any above grade construction work. Such drive to be installed according to fire department specifications: (1) Twenty feet of drivable surface is provided the entire length of the access drive designed to withstand the weight of fire apparatus in inclement weather with provisions for turning fire apparatus around. (2) To meet fire department specifications, the surface needs to be an all-weather material consisting of rock or gravel, ground asphalt, laid asphalt or concrete. It is to be applied a minimum of 4 inches in depth consistently over the entire width and length of the driving surface (gravel is prone to problems during extended periods of rain or snow and should be used with caution unless a good solid compacted base has been installed.)
- H. In accordance with Access Management Regulations for County plats, complete access control is required for arterials intersecting with local streets. Complete access control of 75 feet is needed along Sunset Drive from 311th St. West.
- I. The applicant shall guarantee the installation of the proposed streets. Sunset Drive and Sunset need to be 36' rock standard.
- J. In accordance with the KS Wetland Mapping Conventions under the Memorandum of Understanding between the USDA - NRCS; USEPA; USACE; and USF&WS, this site has been identified as one with potential wetland hydrology. The US Army Corps of Engineers (USACE) should be contacted (316-322-8247) to have a wetland determination completed."
- K. **GIS** needs to comment on the plat's street names. **The north-south through street needs to be named Koenigs Dr. The east-west street and its court need a new name.**
- L. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- M. The applicant shall install or guarantee the installation of all utilities and facilities that are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- N. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- O. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone: 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- P. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- Q. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- R. Perimeter closure computations shall be submitted with the final plat tracing.
- S. Recording of the plat within 30 days after approval by the City Council and/or County Commission.
- T. The representatives from the **utility companies** should be prepared to comment on the need for any additional utility easements to be platted on this property. **Southwestern Bell has requested additional easements.**
- U. The applicant is reminded that a compact disc (CD) shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD, or sent via e-mail to MAPD ([cholloway@wichita.gov](mailto:cholloway@wichita.gov)). This will be used by the City and County GIS Department.

**MOTION:** To approve, subject to staff comments and citing the findings in their report.

**MARNELL** moved, **DUNLAP** seconded the motion, and it carried (11-0).

2-5. **SUB2004-90 - One-Step Final Plat – BELTON ADDITION, located east of Seneca and north of 55<sup>th</sup> Street South.**

**NOTE:** This is an unplatted site located within the City.

**STAFF COMMENTS:**

- A. Municipal services are available to serve the site.
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- C. Osage Avenue, located adjacent to the west line of the plat, is not open and should be vacated. Since the west half of Osage Street is not being dedicated by this plat the Applicant shall contact the property owner to the west to attempt to have this half-street right-of-way vacated.
- D. **City Engineering** needs to comment on the status of the applicant's drainage plan. **An off-site drainage agreement is needed with the property to the east.**
- E. The Applicant shall provide a proposed road layout to the **Traffic Engineer** for review and approval. **A petition for future paving of Osage is needed.**
- F. The plat's text shall include reference to "a lot and block" in the owner's certificate.
- G. This property is within a zone identified by the City Engineers' office as likely to have groundwater at some or all times within 10 feet of the ground surface elevation. Building with specially engineered foundations or with the lowest floor opening above groundwater is recommended, and owners seeking building permits on this property will be similarly advised. More detailed information on recorded groundwater elevations in the vicinity of this property is available in the City Engineers' office.
- H. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- I. The applicant shall install or guarantee the installation of all utilities and facilities that are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- J. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- K. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone: 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- L. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- M. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- N. Perimeter closure computations shall be submitted with the final plat tracing.
- O. Recording of the plat within 30 days after approval by the City Council and/or County Commission.
- P. The representatives from the **utility companies** should be prepared to comment on the need for any additional utility easements to be platted on this property. **Southwestern Bell has requested additional easements.**
- Q. The applicant is reminded that a compact disc (CD) shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD, or sent via e-mail to MAPD ([cholloway@wichita.gov](mailto:cholloway@wichita.gov)). This will be used by the City and County GIS Department.

**MOTION:** To approve, subject to staff comments and citing the findings in their report.

**MARNELL** moved, **DUNLAP** seconded the motion, and it carried (11-0).

2-6. **DED2004-19 – Contingent Dedication of a Sidewalk and Utility Easement, for property located on the southeast corner of West Street and 31<sup>st</sup> Street South.**

**AGENT/SURVEYOR:** Baughman Company, P.A., 315 Ellis, Wichita, KS 67211

**LEGAL DESCRIPTION:** A five-foot sidewalk and utility easement for the following described property:

The west five feet of that part of Lot 10, Block 1, Fourth Addition to Southwest Village, Wichita, Sedgwick County, Kansas, described as beginning at a point in the west in and 210.50 feet south of the northwest corner of Lot 10; thence east at an included angle 90°, a distance of 171.00 feet; thence south parallel to the west line of Lot 10, a distance of 85.52 feet, more or less, to a point in the south line of the north half of said Lot 10; thence west along the south line of the north half of Lot 10, a distance of 171.00 feet to a point in the west line of Lot 10; thence north 84.50 feet to the point of beginning.

**PURPOSE OF DEDICATION:** This Dedication is a requirement of a lot split case (SUB 2004-46) for a contingent sidewalk and utility easement along West Street.

**STAFF RECOMMENDATION:** Accept the Dedication.

**MOTION:** To approve, subject to staff comments and citing the findings in their report.

**MARNELL** moved, **DUNLAP** seconded the motion, and it carried (11-0).

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❖ **PUBLIC HEARING — VACATION ITEM**

**3-1. VAC2004-01 – Request to Vacate Access Controls along the US 54 Frontage, located ½ mile east of the US 54/Webb Road intersection, on the south side of Kellogg.**

**APPLICANTS:**

Nestor R Weigand Jr                      Ross Tidemann  
Louis E & Norma Jean Weiss        Herbert L Krumsick  
KTWLLC & KTWITLLC

**AGENT:**

MKEC c/o Gene Rath

**LEGAL DESCRIPTION:**

All of the north line of Lot 1, Block A, Pizza Hut Second Addition, together with the west 30-feet of Lot 1, Block 1, KT Wiedemann Business Park, as recorded with Wichita, Sedgwick County, Kansas

**LOCATION:**

Generally midway between Webb Road and Greenwich Road on the south side of Kellogg Avenue.

**REASON FOR REQUEST:**

Relocation of access onto sites from the Kellogg – US Highway -54 frontage road.

**CURRENT ZONING:**

The subject site and properties east, west and south of the subject site are zoned “GC” General Commercial. Property north of the subject site is zoned “LI” Limited Industrial.

The applicants are requesting consideration to vacate access control along the north line of Lot 1, Block A, Pizza Hut Second Addition, together with the west 30-feet of Lot 1, Block 1, KT Wiedemann Business Park Addition. Currently access onto the Pizza Hut Second Addition is confined to the west 30-feet of the lot. Access onto Lot 1, Block 1, KT Wiedemann Business Park Addition is off of Wiedemann street, which abuts the east side of that lot. The applicant proposes to relocate access to the east corner of the north line of the Pizza Hut Second Addition and the west 30-feet of the north lot line of Lot 1, Block 1, KT Wiedemann Business Park Addition, creating a joint access for the two abutting sites. Pizza Hut Second Addition was recorded with the Register of Deeds December 3, 1969. The KT Wiedemann Business Park addition was recorded with the Register of Deeds May 29, 1980.

Issues for consideration include (1) Comments from the Kansas Department of Transportation, as stated in a June 7, 2004 letter (received by Staff July 12, 2004), in regards to access onto Kellogg – US Highway -54, (2) Conditions as stated by the City of Wichita Public Works and (3) Any required amendment or adjustment to CUP DP-36 (Pizza Hut Second Addition) or CUP DP-88 (KT Wiedemann Business Park addition) triggered by action on the vacation request.

Based upon information available prior to the public hearings and reserving the right to make recommendations based on subsequent comments from City Public Works, franchised utility representatives and other interested parties, Planning Staff recommends approval to vacate access control, subject to the following conditions:

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
  1. That due and legal notice has been given by publication as required by law, in the Wichita Eagle, of notice of this vacation proceeding one time February 12, 2004 which was at least 20 days prior to this public hearing.
  2. That no private rights will be injured or endangered by the vacation of the above-described portions of access control and the public will suffer no loss or inconvenience thereby.
  3. In justice to the petitioner, the prayer of the petition ought to be granted.

B. Therefore, the vacation of the portion of the access control, described in the petition should be approved with conditions:

- (1) One point of access onto Kellogg – US Highway -54 will only be permitted. That single point of access shall from the Kellogg – US-54 Highway frontage road, per the conditions as stated in the June 7, 2004 letter from the Kansas Department of Transportation.
- (2) Vacate only that portion of the Kellogg – US-54 Highway frontage road as approved by the City of Wichita Traffic Engineer and per the conditions as stated in the June 7, 2004 letter from the Kansas Department of Transportation on Lot 1, Block A, Pizza Hut Second Addition and Lot 1, Block 1, KT Wiedemann Business Park addition. Provide dedication of one joint access from the Kellogg – US-54 Highway frontage road onto Lot 1, Block A, Pizza Hut Second Addition and Lot 1, Block 1, KT Wiedemann Business Park addition.
- (3) Provide dedication of access control to eliminate the current platted points of access from the Kellogg – US-54 Highway frontage road onto Lot 1, Block A, Pizza Hut Second Addition and Lot 1, Block 1, KT Wiedemann Business Park addition that will be replaced by the approved new access.
- (4) Provide a guarantee/petition for an extension/paving of the existing Kellogg – US-54 Highway frontage road.
- (5) Complete any required amendment or adjustment to CUP DP-36 (Pizza Hut Second Addition) or CUP DP-88 (KT Wiedemann Business Park addition) triggered by action on the vacation request.
- (6) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicants.
- (7) All improvements shall be according to City Standards, including any driveways from private property onto public ROW.
- (8) All conditions to be completed within 6 months of approval by the MAPC or the vacation request will be considered null and void.

**SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:**

The Subdivision Committee recommends approval subject to the following conditions:

- (1) One point of access onto Kellogg – US Highway-54 will only be permitted. That single point of access shall from the Kellogg – US-54 Highway frontage road, per the conditions as stated in the June 7, 2004 letter from the Kansas Department of Transportation.
- (2) Vacate only that portion of the Kellogg – US-54 Highway frontage road as approved by the City of Wichita Traffic Engineer and per the conditions as stated in the June 7, 2004 letter from the Kansas Department of Transportation on Lot 1, Block A, Pizza Hut Second Addition and Lot 1, Block 1, KT Wiedemann Business Park addition. Provide dedication of one joint access from the Kellogg – US-54 Highway frontage road onto Lot 1, Block A, Pizza Hut Second Addition and Lot 1, Block 1, KT Wiedemann Business Park addition.
- (3) Provide dedication of access control to eliminate the current platted points of access from the Kellogg – US-54 Highway frontage road onto Lot 1, Block A, Pizza Hut Second Addition and Lot 1, Block 1, KT Wiedemann Business Park addition that will be replaced by the approved new access.
- (4) Provide a guarantee/petition for an extension/paving of the existing Kellogg – US-54 Highway frontage road.
- (5) Complete any required amendment or adjustment to CUP DP-36 (Pizza Hut Second Addition) or CUP DP-88 (KT Wiedemann Business Park addition) triggered by action on the vacation request.
- (6) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicants.
- (7) All improvements shall be according to City Standards, including any driveways from private property onto public ROW.
- (8) All conditions to be completed within 6 months of approval by the MAPC or the vacation request will be considered null and void.

**MOTION:** To approve, subject to staff comments and citing the findings in their report.

**MARNELL** moved, **DOWNING** seconded the motion, and it carried (11-0).

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❖ **PUBLIC HEARING — ZONING ITEMS**

4. **Case No.: ZON2004-20** – Dale R. & Jolene K. Smith Request Zone change from “TF-3” Two-family Residential to “LC” Limited Commercial on property described as;

The North 120 feet of the following tract of land described as: Beginning 660 feet East and 924 feet South of the Northwest corner of the Southwest Quarter of Section 24, Township 27 South, Range 1 West of the 6th P.M., Sedgwick County, Kansas,

thence East 165 feet; thence South 396 feet; thence West 165 feet; thence North to the place of beginning, except the South 2 Rods used for road and street purposes. General Location: East of West Street one block, north of Douglas.

**DAB VI May 19, 2004, approved "GO" General Office, vote (6-1)**  
**MAPC May 20, 2004, approved "GO" General Office, vote (12-1)**  
**WCC July 13, 2004, returned to DAB VI and MAPC**  
**DAB VI – August 2, 2004**  
**MAPC – August 5, 2004**

**BACKGROUND:** The applicant's 1.23-acre (396-foot (x) 135-foot) unplatted tract is divided by two zoning classifications. The south 0.86-acre portion of the applicant's tract is zoned "LC" Limited Commercial. The "LC" portion of the tract is mostly paved commercial parking built around an on site auto repair business (currently not operating) and a residential structure, which is used as residential rental property. The north 0.37-acre portion of the applicant's tract is zoned "TF-3" Two-family Residential. There is an approximately 25-foot (x) 135-foot section of the paved parking lot from the "LC" section of the tract extending into the south part of the "TF-3" zoned portion of the tract. This section of the existing parking area in the "TF-3" zoning is what originally triggered the zoning change request. The "TF-3" zoning district does not permit off-site parking. The zoning change request covers all of the "TF-3" zoned section of the applicant's tract, which is undeveloped except for the nonconforming parking area. The applicant is requesting consideration for a zoning change from "TF-3" to "GO" with a Protective Overlay on this north portion of the tract.

The parking area serves the on site business and residential rental, plus a beautician school located east of the site, across McComas Avenue. The applicant is not proposing to build anymore parking at this time. A parking area, commercial, is a permitted use in "GO" General Office, "NR" Neighborhood Retail, "LC" Limited Commercial, "GC" General Commercial, "CBD" Central Business District, "LI" Limited Industrial or "GI" General Industrial zoning district.

The adjacent properties to the east and north of the site are zoned "TF-3" and are developed primarily as single family residential or as duplexes. Most of the residential structures in the adjacent residential areas were built from the 1920s to 1930, with the few remaining residences built in the late 1960s to the mid 1970s. The properties to the west, across McComas Avenue, are zoned "B" Multi-family Residential and "LC". The property zoned "B" is developed as apartments, which were built in the early 1970s. The "LC" zoned property has a commercial strip center on it (built in the early 1950s) and currently contains the beautician school, which is using the applicant's existing parking areas in both the "LC" and "TF-3" zoned sections. Any future development of the portion of the applicant's re-zoned tract would require platting of the whole tract and would trigger landscaping, screening and any other applicable development standards, permits and inspections.

**CASE HISTORY:** The 0.37-acre site is part of a 1.28-acre unplatted tract. The applicants originally requested "LC" Limited Commercial zoning for the "TF-3" zoned portion of the tract. Staff recommended "GO" zoning as a more appropriate zoning for the "TF-3" zoned portion of the tract. District Advisory Board VI considered this case at their May 19, 2004 meeting and recommended approval (6-1) of the zone change to "GO". One person spoke in opposition to the requested zoning change at the meeting. The Metropolitan Area Planning Commission considered this case at their May 20, 2004 meeting and recommended approval (12-1) of the zoning change to "GO". One person spoke in opposition to the requested zoning change at the meeting. The Wichita City Council consider this requested zoning change at their July 13, 2004 meeting and recommended (unanimously) that the request be sent back to DA B VI and the MAPC for reconsideration. The applicant has subsequently agreed to the Staff's recommendation of "GO" zoning with a Protective Overlay and not the originally requested "LC" zoning. The attached PO #144 was not a part of the original zoning change request that was considered by the MAPC or DAB VI. There is recorded protest against the zone change, which represents 41.12% of the area.

#### **ADJACENT ZONING AND LAND USE:**

NORTH:	"TF-3" Twofamily residential	Single-family residential
EAST:	"TF-3" Twofamily residential	Two-family residential
SOUTH:	"LC" Limited commercial	Unimproved commercial parking
		Single-family structure
		Convenience store
WEST:	"LC" Limited commercial	Beautician school
	"B" Multi-family residential	Apartments

**PUBLIC SERVICES:** Douglas is classified as an urban collector and is a paved two- lane road, at this point with room for street side parking. McComas Avenue is a paved residential street. Average Daily Trips (ADT) at the Douglas – West intersection, one block west of the site, is 22,971 ADTs north, 24,279 ADTs south, 7,452 ADTs east and 3,509 ADTs west. There are no Capital Improvement Projects for Douglas. There is a CIP for drainage improvements from West Street east through an area north of the site. There is gas, water, sewer and electricity for the site.

**CONFORMANCE TO PLANS/POLICIES:** The Land Use Guide of the Comprehensive Plan identifies this area as appropriate for "Low Density Residential" development. The "Low Density Residential" category provides for the lowest density (1 to 6 units per acre) of urban residential land use and consists of single-family detached homes, zero lot line units, cluster subdivisions, and planned developments with a mix of housing types that may include townhouse and multi-family units. The Commercial Locational Guideline of the Comprehensive Plan recommends that commercial sites should be located adjacent to arterials and should have site design features that limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The applicant's tract partially complies with the locational criteria in that there is access onto Douglas Avenue, but the tract also has access onto McComas, a residential street, which is not in compliance with locational criteria. The originally requested "LC" zoning for the commercial parking could possibly bring uses not recommended by the Comprehensive Plan into the immediate area. The applicant's tract is also located in a revitalization area, which is an area that has experienced some decline but still has good market and development opportunities. Physical improvements and flexibility of regulations, such as parking, is recommended by the Comprehensive Plan to create innovative and economically feasible projects in the area.

**RECOMMENDATION:** Based on the information available prior to the public hearing, staff recommends the application be APPROVED, for "GO" General Office zoning with a Protective Overlay, rather than the originally requested "LC" zoning. The "GO" zoning would bring the nonconforming 25-foot (x) 135-foot section of the existing parking area into compliance with the UZC. The "GO" zoning district with the provisions of PO #144 would provide a transitional zoning between the applicant's existing predominate "LC" zoning and the abutting residential zoning and development, as recommended by the "Office" Locational Guideline of the Comprehensive Plan.

1. Signage will be a monument type and per Sign Code for the "NO" Neighborhood Office zoning district. No signs or illuminated signs along the north, northwest and east sides of the "GO" General Office zoned portion of the property where abutting or adjacent to residential zoning. No flashing, rotating or moving signs, signs with moving lights, or signs which create the illusion of movement. No portable or off-site signs permitted.
2. Parking lot lighting elements will be a maximum of 14-feet tall and be a full cut-off type. A full cut-off type of exterior lighting is constructed in such a manner that all light emitted is projected downward, is permanently affixed and is nonadjustable. Lighting will be located no closer than 30-feet from the north and east sides of the "GO" zoned portion of the property and directed towards the south and west sides of the site.
3. Landscaping will be 1.5 times the minimum per the landscape code. A 15-foot landscape buffer will be provided along the north and east sides of the "GO" General Office zoned portion of the property. Landscaping will be installed at the time of any improvements to the "GO" General Office zoned portion of the property. Prior to the issuances of any building or paving permits a landscape plan will be reviewed and approved by the Planning Director.
4. At the time of any improvements to the "GO" General Office zoned portion of the property solid screening will be provided on the north and east sides of the "GO" General Office zoned portion of the property.
5. Permitted uses on the "GO" General Office zoned portion of the property are single-family residential, two-family residential and a commercial parking lot.
6. Platting for the entire site will be required at the time of any improvements, including paving, to the "GO" General Office zoned portion of the property or the "LC" Limited Commercial zoned portion of the property.
7. The maximum height for all structures will be 35-feet.
8. No new points of access from McComas Avenue onto the "GO" General Office zoned portion of the property are permitted.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood. The surrounding area is zoned "TF-3", "LC" and "B". Use of the surrounding area is predominately single-family residential, duplex residential & apartments, with abutting single-family residential and duplex residential homes north and east of the subject site. There is small stand alone or small strip retail and commercial development located along Douglas Avenue and abutting or adjacent to the site's south side.
2. The suitability of the subject property for the uses to which it has been restricted. The site could be developed for single-family residential or duplex residential use, although its proximity to existing older, small-scale commercial uses has probably made it less desirable.
3. Extent to which removal of the restrictions will detrimentally affect nearby property. The "GO" zoning district with the provisions of the Protective Overlay would provide a transitional zoning between the abutting single-family and duplex residential development and the existing commercial development as recommended by the Office Locational Guideline of the Comprehensive Plan.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The Comprehensive Plan shows this site as appropriate for low density residential. Douglas at this location provides the access needed for the existing parking, which is all located in the existing "LC" zoned portion of the applicant's tract, except for the 25-foot (x) 135-foot encroaching into the "TF-3" zoned portion of the applicant's tract. The applicant's tract is also located in a revitalization area, which is an area that has experienced some decline but still has good market and development opportunities. Physical improvements and flexibility of regulations, such as parking, is recommended by the Comprehensive Plan to create innovative and economically feasible projects in the area. The Planning Commission has a policy of generally supporting the expansion of existing businesses and it is reasonable to assume that expansion of the existing parking is possible.
5. Impact of the proposed development on community facilities: The impact of this development on the community facilities will be minimal.

BILL LONGNECKER Planning staff presents staff report.

DUNLAP If I remember this case, the property north of the site was owned by the same people, wasn't it?

LONGNECKER The property from Douglas up to the area that is going to be rezoned is all under one ownership.

DUNLAP But not the property north?

LONGNECKER No, the property north of the site has a separate owner.

DALE SMITH We are in agreement with staff recommendations and compliment Staff's hard work in preparing the Protective Overlay.

KENNETH CHILDRESS, 140 N. MCCOMAS, WICHITA, KS 67203 I live immediately north of the property and I would also like to compliment Staff's working to try to resolve the issues of this case. That being said, the neighborhood does not want any additional parking in the neighborhood. Every residential owner within the notification boundaries signed a protest petition. The only four people who did not sign the petition were two people who owned the building, Mid-Way Oil Company, who owns the gas station and an additional parking lot there, and the applicant.

We have tried to make it very clear to the applicant that we do not want to take away the 25 feet that is already paved on this piece of property. We will let that stand, we are okay with that. The Protective Overlay sounds good. Item 1, about the signage. This is a parking lot for a beauty school, which is already leased to the school for daytime parking. The students know where the parking is, McComas is a residential street and there is no need for any signage for this type of parking regardless of the restrictions of the size or the composition. Lighting and parking are optional of the applicant. The lot is geared for daytime parking, so it would seem no lighting would be necessary. Landscaping has been increased to 1-1/2 times the minimum for "GO", and this is easily and cheaply accomplished because there are already trees bordering this property for screening. The only solid screening he would have to put in is a wooden fence for 255 feet. The primary thing that we are concerned with is the addition of the commercial parking lot. The neighborhood does not want any more asphalt in the neighborhood. I request that you restrict the commercial parking lot to passenger vehicles only. Please maintain the mature trees that encompass the two sides of this property, which are the east and the north sides.

BARFIELD The parking that is there now, is that adequate?

LONGNECKER The existing parking is serving a business that is not operating at this time, a garage, a residential rental property, which I am not sure how many units are in it, and off-site parking for the beautician school, across McComas. I am not sure what the numbers would be as far as providing parking for those properties. At this time the applicant is not suggesting any expansion of the parking lot, however, at some time I think it is reasonable to assume that it will expand.

GAROFALO The parking on the south end of the tract is that the beauty school parking?

LONGNECKER The beauty school has access to all the existing parking.

MITCHELL Is there any way to enforce the two things Mr. Childress asked for?

LONGNECKER We can put them in the Protective Overlay. As far as assuring that no more trees are removed, we could go out and take pictures of that and make that part of the record and if the neighbors report any trees coming down we could compare that. As far as for passenger cars only that could be easily enforced by sight. This is the area that they are talking about that there are some large truck and looks like a tree trimming company and I found no permit for parking there and it has been reported to Code Enforcement. I think that is the neighbors prime concern is if the area behind the gas station is an illegal parking area, the trucks may slip over to this parking.

HENTZEN The staff recommendation does not include the two items that Mr. Childress requested?

LONGNECKER They are not currently in the Protective Overlay, but we would not object to them being added. You would have to ask the applicant, if he would not object to them.

HENTZEN You say the trees have to stay, but what if some of them are elm trees and get diseases and they need to be cut down. Would they be replaced? When you say passenger cars does that mean a pick-up is not allowed to park there?

LONGNECKER A 1/2-ton pick-up is classified as passenger car. The neighbors are concerned with the type of trucks that are parked in what appears to be an illegal parking lot. Staff has already asked Code Enforcement to look at this possible illegal parking. The type of trucks that are parked there have cherry pickers on them for tree trimming. We can add more specific language about the type of vehicles allowed to park.

KNEBEL There is a specific definition of passenger vehicles in the Zoning Code.

JOHNSON I think that might be a good idea, but as far as limiting the number of trees being taken out I don't know that we want to make a parking lot design where it doesn't work around a tree. I think the owner would want to keep most of the existing trees. How would we keep the existing trees in place and replace those removed because of disease.

MILLER That could be handled with the replace any that are removed clause.

DUNLAP This is a new parking lot. We have a Landscape Ordinance for a new parking lot. We can't approve this without applying the new Landscape Ordinance to the parking lot.

MARNELL Plus the Protective Overlay already says it is going to be 1-1/2 times the requirement.

MILLER This lot is exempt from the Landscape Ordinance because McComas is a residential street and it is across from commercial zoning so the Landscape Ordinance would not be triggered in this particular case.

MARNELL So, is landscaping 1-1/2 times the minimum per the Landscape Code is irrelevant then?

MILLER What that is saying if you approve it with that condition, those are the numbers that we would be looking to use, it is a simple way to reference the standard. But the way it is now they don't fall under the provisions of the Landscape Ordinance.

KNEBEL It would apply to the other third of an acre that is undeveloped.

GAROFALO Is the applicant in agreement with each of the conditions?

SMITH Yes, I am in agreement with the staff recommendations.

GAROFALO Do you have any objection to the inclusion of passenger vehicles only?

SMITH I believe that it is unnecessary. You cannot park a commercial truck in that zoning. I think that is already covered. "GO" wouldn't allow it anyway, and that is part of the Code.

GAROFALO What about the maintaining the mature trees?

SMITH We won't remove any trees unless they die or need to be removed. We are not changing anything including the trees unless the one of the trees dies and should we need to. We will maintain what is necessary.

GAROFALO Obviously, if a tree dies you would take it out.

SMITH There are enough trees there to conform to the Landscape Ordinance if we ever choose to plat the property and add the other 26 spaces. At this point adding those 26 spaces would cost something like \$50,000, but we don't want to close the door on some day it might be necessary.

GAROFALO You would not like to see those provisions applied as a condition of the Protective Overlay.

SMITH I think the landscaping per the Protective Overlay is sufficient, and I am not removing any trees that are not dead. The existing trees met the intent of the PO's landscaping requirement.

GAROFALO If commercial trucks go in there and park you will see that they are removed?

SMITH There were won't be any commercial trucks.

MILLER The answer to the commercial parking, the way the Code is written vehicles up to 26,000 lbs can park in a commercial parking area.

KNEBEL Whether they are passenger vehicles or commercial vehicles.

**MOTION:** To approve, subject to staff comments and citing the findings in their report.

**MARNELL** moved, **HENTZEN** seconded the motion, and it carried (10-1) **BISHOP** opposed.

5. **Case No.: CON2004-21** – Charles L. Rude Request Sedgwick County Conditional Use to permit a horse boarding, breeding, training stable, and riding arena on property Zoned "RR" Rural Residential on property described as;

The West 340 feet of the South 1340 feet of the Southwest Quarter of Section 13, Township 28 South, Range 2 East of the 6th P.M., Sedgwick County, Kansas, except the South 40 feet thereof for road. Generally located at the northwest corner of 47<sup>th</sup> Street South and 143<sup>rd</sup> Street East.

**MAPC deferred this case from its July 22, 2004 meeting.**

**BACKGROUND:** The applicant is seeking a Conditional Use to permit a horse boarding, breeding, training stable and riding arena on 10 acres zoned "RR" Rural Residential located at the northeast corner of 47<sup>th</sup> Street South and 143<sup>rd</sup> East. The applicant has been operating Lone Pine Stables at this location since 1992, but wishes to expand the stable's infrastructure by adding a covered riding arena, and obtain a Conditional Use for his existing corrals, pastures, outdoor riding, training, and exercise areas to remove any cloud of nonconforming use status to his operation. The covered riding arena has been constructed and would have interior lighting only.

The site may have nonconforming use rights to some intensity of horse boarding, breeding and training as the previous owner has submitted a letter indicating, in addition to their own horses, they boarded, raised and bred horses for others in the horse industry. Mrs. Ruth-Shawver states that her family began their horse operation in 1976. County Code Enforcement has not made an official interpretation regarding what level of nonconforming rights the applicant may have, as they prefer to await the results of this Conditional Use request. If this request were to be approved, a determination of the site's nonconforming rights would not be necessary.

Currently the site has a: home, round training pen, walker, stable, corrals/pastures of various sizes, pond, lagoon and parking areas. (See attached site plan.) The applicant has facilities to board 22 horses. On the busiest days eleven vehicles may come and go from the site, on a typical day the number of trips is smaller. Parking and driveways are graveled. Services provided by the applicant include: boarding, foundation training, beginner lessons and horse rental. The site has driveway connections to both

section line roads. Currently stall cleanings are hauled to the very northeast corner of the applicant's property and composted. The owner indicates in a typical year most of the material is ultimately picked up by nearby property owners and used in their gardening.

Located directly west, across 143<sup>rd</sup> Street, from the applicant's property is the applicant's family's 240-acre farm, established in 1887. The land immediately to the east of the site is broken into a series of large lot residential tracts with the smallest being 5 acres in size. These smaller tracts are all developed with homes. The properties to the south and southwest are much larger agricultural tracts. Land to the north is divided into a series of large tracts, under a single ownership. All nearby land is either used for agricultural and/or home site purposes, and zoned "RR" Rural Residential. There currently is a cattle operation located north of the site, and there is, or has been, cattle raised on the property located to the south.

At the time this report was prepared, staff had received two phone calls expressing opposition to the request. They expressed concerns about any intensification in the business appearance of the applicant's property that would negatively impact their property. They also cited the existence of private covenants that prohibit commercial livestock operations. One caller expressed concern over odor, flies, and increased traffic. In response to the concerns, the applicant has hired someone to provide additional file control, and indicated he might be able to move the manure pile to another location, if necessary. With respect to a private covenant prohibiting a commercial livestock operation, it has no bearing on this Conditional Use request. Private land use covenants are expressly that, private agreements between the buyer and the seller of the land. Governments are not typically made a party to any covenants, therefore enforcement of the covenant restrictions would not be a County matter, but would be a private matter between the landowners who are a party to the restrictions. If the request is approved, but the covenants are upheld, presumably the applicant would be prohibited by the court from using the Conditional Use.

(Staff has not reviewed any covenants dealing with this request, and is not commenting on their enforceability or effectiveness, but is expressing a general principle regarding private covenants and public land use regulations. With these comments staff is also not intending to discourage property owners subject to any applicable covenants from enforcing the conditions contained in the covenants to the maximum extent possible.)

**CASE HISTORY:** None

**ADJACENT ZONING AND LAND USE:**

NORTH: "RR" Rural Residential; agriculture  
SOUTH: "RR" Rural Residential; agriculture, farmstead  
EAST: "RR" Rural Residential; large-lot residential  
WEST: "RR" Rural Residential; agriculture

**PUBLIC SERVICES:** Public sewer service is not available; the site uses a lagoon. The site is located within Sedgwick County Rural Water District No. 3 boundaries. 143<sup>rd</sup> Street is an unpaved two-lane facility. 47<sup>th</sup> Street is a paved two-lane facility.

**CONFORMANCE TO PLANS/POLICIES:** The "Sedgwick County Development Guide" map depicts the site as appropriate for "rural" uses. The "rural" category denotes land that is located beyond the 2030 urban service boundary for Wichita, and it is also beyond the growth areas for any of the smaller communities located within Sedgwick County. The rural designation is intended to accommodate agricultural uses, rural based uses that are no more offensive than normal agricultural uses, and large lot residential subdivisions with provision for future water and sewer services.

**RECOMMENDATION:** Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to the following conditions:

- A. The site shall be developed and maintained in general conformance with the approved site plan. In addition to those uses permitted in the "RR" Rural Residential district, the site shall be limited to the following uses: boarding, breeding and training of horses and riders and riding arena.
- B. All applicable permits and licenses shall be obtained in a timely basis (e.g. on-site sewage and water wells, building permits, zoning and animal waste handling and disposal).
- C. Animal wastes from areas where the animals have been confined shall be gathered as needed and as weather permits to prevent flies and odor. The gathered waste shall be disposed of in a manner acceptable to Sedgwick County Code Enforcement.
- D. The horse stable facility shall be maintained free of rodent harborage, including but not limited to improperly stored materials, enclosed partition walls and wooden floors closer than 12 inches to the ground. Grain or protein feed shall be stored in tightly covered rodent-proof metal container or rodent-proof bins. Use shall be made of rodenticide and insecticides for control of rodents and flies. The horse stable shall be cleaned at least once each week, or more often if necessary, to prevent or control odors, fly breeding and rodent infestation.
- E. Weeds and grass around the stable and corral areas shall be controlled and kept at a height that they do not provide a fire hazard or harbor vectors such as mosquitoes or vermin.
- F. The horse stable and any associated board fences or wooden horse shelters shall be protected from deterioration by an appropriate water proofing method. The stable building, fences and shelters shall be constructed of dimensioned building materials. Pipe fencing is permitted and shall be maintained in good repair.
- G. The maximum number of horses to be boarded at any one time is 22, plus any foals which may be stabled with the mare for a period of one year, at which point they would be stabled separately and count toward the specified limit of 22 horses. The limit of 22 horses includes the applicant's horses. In addition to the 22 horses that may be boarded on-site, an additional 20

horses may be permitted for equestrian events lasting up to three days, four times a year. Additional non-boarded horses may be permitted for equestrian events so long as the total number of horses on-site at any one time does not exceed 42.

- H. All equestrian facilities shall be used only by the property owner, the owner's customers and their guests.
- I. The buildings and structures associated with the horse stable shall be open to unannounced inspection by Sedgwick County Department of Code Enforcement and Health Department personnel during reasonable hours to insure continued compliance with the requirements of this Conditional Use.
- J. All covered riding arena related activities shall cease by 10:00 P.M., and any arena related outdoor lighting shall be turned off by 10:30 P.M. Outdoor riding and training activities shall not begin before sunrise and shall cease by 10:00 P.M.
- K. The number of non-resident employees shall not exceed five persons.
- L. No public address systems can be employed in a manner that permits the sound to be heard beyond the applicant's property boundaries.
- N. Any violation of the conditions of approval of this Conditional Use shall declare the Conditional Use permit null and void.

This recommendation is based on the following findings:

- 1. The zoning, uses and character of the neighborhood: All surrounding properties are zoned "RR" Rural Residential, and used for agricultural or large-lot residential purposes. This area is rural in character with farming and cattle operations and scattered large-lot residences. Significant portions of the land area in this portion of the County are used for agricultural activities, such as pasture, hay, wheat or cattle.
- 2. The suitability of the subject property for the uses to which it has been restricted: The property is zoned "RR" Rural Residential, and could be used as currently zoned. The site may have nonconforming use rights to operate some level of horse breeding, training and stable activities.
- 3. Extent to which removal of the restrictions will detrimentally affect nearby property: The stable exists today and the nearby properties appear to be well maintained and do not appear suffer any ill effects from this operation. Also, the conditions placed on the development by the Conditional Use and various code requirements further minimize negative impacts.
- 4. Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: Approval of the request will eliminate a nonconforming use. Denial would maintain the nonconforming use status and probably limit the applicant's ability to grow his business.
- 5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The "Sedgwick County Development Guide" map depicts this site as appropriate for "rural" uses. The rural designation is intended to accommodate agricultural uses, rural based uses that are no more offensive than normal agricultural uses, and large lot residential subdivisions with provision for future water and sewer services. Equestrian activities and agricultural sales and service uses are appropriate for rural areas and would be consistent with the Plan's recommendations
- 6. Impact of the proposed development on community facilities: Given the fact that the use already exists, minimal, if any negative impacts would occur if this request were approved. Traffic may increase to some degree, but any increases should be able to be met by existing improvements or proposed conditions of approval.

DALE MILLER Planning Staff presented the staff report and the revised conditions of approval:

**RECOMMENDATION:** Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to the following conditions:

- A. The site shall be developed and maintained in general conformance with the approved site plan. Proper drainage shall be provided to prevent the accumulation of rainfall or liquid wastes. In addition to those uses permitted in the "RR" Rural Residential district, the site shall be limited to the following uses: boarding, breeding and training of horses and riders and riding arena.
- B. All applicable permits and licenses shall be obtained in a timely basis (e.g. on-site sewage and water wells, building permits, and zoning ~~and animal waste handling and disposal~~).
- C. ~~Animal wastes from areas where the animals have been confined shall be gathered as needed and as weather permits to prevent flies and odor. The gathered waste shall be disposed of in a manner acceptable to the Wichita Sedgwick County Health Department.~~ Disposal of collected fecal material and other solid organic waste shall be at a sanitary landfill, transfer station, fertilizer processing plant or by proper disposal on land used for agricultural purposes. Any solid waste, other than solid waste accumulated from the cleaning of the horse shelters, shall be stored in proper containers, and all solid waste shall be disposed of at least once or week or more frequently as may be required by the Health Officer.
- D. The horse stable facility shall be maintained free of rodent harborage, ~~including but not limited to improperly stored materials, enclosed partition walls and wooden floors closer than 12 inches to the ground.~~ Grain or protein feed shall be stored in tightly covered rodent-proof metal container or rodent-proof bins. Use shall be made of anticoagulant rodenticides and organophosphorus insecticides for control of rodents and flies. The horse stable shall be cleaned at least once each week, or more often if necessary, to prevent or control odors, fly breeding and rodent infestation.

- E. Weeds and grass around the stable and corral areas shall be controlled by soil sterilants, herbicides or other effective methods and kept at a height that they do not provide a fire hazard or harbor vectors such as mosquitoes or vermin.
- ~~F. The horse stable and any associated board fences or wooden horse shelters shall be protected from deterioration by an appropriate water proofing method. The stable building, fences and shelters shall be constructed of dimensioned building materials or other effective means so as to prevent horses from breaking out or causing a hazard to persons or property. Pipe fencing is permitted and shall be maintained in good repair.~~
- G. The maximum number of horses to be boarded at any one time is 22, plus any foals which may be stabled with the mare for a period of one year, at which point they would be stabled separately and count toward the specified limit of 22 horses. The limit of 22 horses includes the applicant's horses. In addition to the 22 horses that may be boarded on-site, an additional 20 horses may be permitted for equestrian events lasting up to three days, four times a year. Additional non-boarded horses may be permitted for equestrian events so long as the total number of horses on-site at any one time does not exceed 42.
- H. All equestrian facilities shall be used only by the property owner, the owner's customers and their guests.
- I. The buildings and structures associated with the horse stable shall be open to unannounced inspection by the Health Officer, or Sedgwick County Department of Code Enforcement and Health Department personnel during reasonable hours to insure continued compliance with the requirements of this Conditional Use.
- J. All covered riding arena related activities shall cease by 10:00 P.M., and any arena related outdoor lighting shall be turned off by 10:30 P.M. Outdoor riding and training activities shall not begin before sunrise and shall cease by 10:00 P.M.
- K. The number of non-resident employees shall not exceed five persons.
- L. No public address systems can be employed in a manner that permits the sound to be heard beyond the applicant's property boundaries.
- N. Any violation of the conditions of approval of this Conditional Use ~~shall declare~~ may result in the Conditional Use permit null and void.

It was noted that the applicant was not in the audience.

GAROFALO On Item C, I am not sure I understand. The disposal of the waste, does this mean it cannot be dumped in the field like it is now done?

MILLER That last clause "by proper disposal on land used for agricultural purposes" would allow for it to be scattered.

HENTZEN Has the applicant seen this revised write up?

MILLER Yes, it was mailed to him.

**MOTION:** To approve subject to staff revised conditions in staff report.

**DUNLAP** moved, **MITCHELL** seconded the motion, and it carried (11-0).

6. Other matters/adjournment.

MCKAY I know I stepped down and this is not because my nephew was the agent on that one issue, but I don't know if you folks realize but you just opened the door for the Traffic Department to use that as an example to require every commercial corner that they want to that the applicant must get 100% petition.

MARNELL That was his opinion, but it said proportional. What I would like to see, we have had this traffic light issue continue to come up, and people held hostage by time constraints to pay an unreasonable amount with this policy. They can't describe if a Quik-Trip is on the corner of a major intersection, is a 1/4 of the intersection or all the land around, if it is under a different ownership because they don't have a policy for it.

MITCHELL When we ask the Traffic Engineer to come up with a policy that we can look at, we just get put off. John, you are not bringing up the Subdivision Regulation change today?

SCHLEGEL No, we have a meeting set sometime soon to finalize that, and I was going to wait until I brought it here.

The Metropolitan Area Planning Department informally adjourned at 3:07 p.m.

I, John L. Schlegel, Secretary of the Wichita-Sedgwick County Metropolitan Area Planning Commission, do hereby certify that the foregoing copy of the minutes of the meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission, held on \_\_\_\_\_, is a true and correct copy of the minutes officially approved by such Commission.

Given under my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

\_\_\_\_\_  
John L. Schlegel, Secretary  
Wichita-Sedgwick County Metropolitan  
Area Planning Commission

(SEAL)